

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER ADOPTING NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS	DOCKET NO. INU-03-1

ORDER REGARDING NINE-MONTH PROCEEDINGS

(Issued September 26, 2003)

In an open meeting on February 20, 2003, the Federal Communications Commission (FCC) adopted rules concerning the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis. Although the FCC's written order memorializing its decisions (FCC 03-36) was not released until August 21, 2003, key findings were announced in a press release on February 20, 2003. Among other matters, the FCC made a presumptive finding of impairment on a location-by-location basis with respect to certain high capacity loops and dedicated transport.¹ Additionally, the FCC determined on a national level that CLECs are impaired without access to unbundled local circuit switching when serving mass market customers. The FCC set forth a

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (Triennial Review Order). See ¶¶ 328-360.

specific process to be used if the national presumption is to be rebutted.² The text of the FCC order was released on August 21, 2003, and published in the Federal Register on September 2, 2003, to be effective on October 3, 2003.

The FCC provided that a state commission would have nine months from the effective date of its order to rebut the presumption of "impairment" as it affects mass market switching in an individual state. After the FCC's meeting, the Utilities Board (Board) opened this docket and sought comments on procedural matters in advance of the release of the text of the FCC's decision. Those interested parties that filed comments all indicated that the Board should not take its own affirmative steps to complete a nine-month analysis of mass market switching. The commenters agreed that the Board should initiate a proceeding to address the FCC's presumption only if an ILEC files a petition and evidence indicating Board review is required. The Board agrees with this analysis, but finds it necessary to provide deadlines to ensure that adequate time is available if such a request is filed.

In order for the Board to have adequate time to complete a nine-month proceeding in response to a ILEC petition rebutting the national presumption, the Board will establish an October 20, 2003, deadline for providing notice of the intent to file such a petition. Because the FCC found it appropriate to consider its specified factors on a market-by-market basis, any notice of intent to file a petition to rebut the national presumption should include a description of the geographic markets the ILEC intends the Board to examine. If a notice of the intent to file a petition is filed,

² *Id.* at ¶¶ 459-485.

the Board will establish a specific procedural schedule to ensure the nine-month requirement can be met.

The FCC also directed state commissions to approve a batch hot cut process or explain why such a process is not necessary in a particular market. The Board must complete this evaluation within nine months.³ In order for the Board to begin its required approval of a batch hot cut process or to make a determination that such a process is not necessary in a specific market, the Board will direct each affected ILEC to provide details regarding its current hot cut process. The information must be filed on or before October 20, 2003. Additionally, each should provide specific comments describing how its current process can be altered, if necessary, to meet the requirements set forth by the FCC. If an ILEC intends to claim that a batch hot cut process is not necessary in a particular geographic market, detailed comments should be filed supporting the ILEC's position. Because the FCC provided that the Board can determine that such a process is not necessary in a particular market, the filings should specifically delineate how the ILEC is defining each geographic market.

IT IS THEREFORE ORDERED:

1. Any petition requesting an opportunity to rebut the national presumption of impairment set forth in the FCC's Triennial Review Order must be filed on or before October 20, 2003, and must include details as discussed in this order.

³ *Id.* at ¶¶ 487-492.

2. All affected ILECs are directed to file details concerning its hot cut process as discussed in this order by October 20, 2003.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of September, 2003.